

MINUTES

**MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION
SUBCOMMITTEE ON LOCAL GOVERNMENT**

Call to Order: By **CHAIRMAN KELLY GEBHARDT**, on January 21, 2003
at 7:15 A.M., in Room 102 Capitol.

ROLL CALL

Members Present:

Sen. Kelly Gebhardt (R)
Sen. Rick Laible (R)
Sen. Mike Wheat (D)

Members Excused: None.

Members Absent: None.

Staff Present: Leanne Kurtz, Legislative Branch
Phoebe Olson, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing SB 46
Executive Action: None

SENATOR KELLY GEBHARDT explained this subcommittee was set up, the mission being to take a look at SB 46, and see if they could come up with something that was a livable situation. He opened it up for remarks.

SENATOR RICK LAIBLE said that when this was discussed in committee it was because there were two bills that were dealing with the same issue, but coming at it from two different directions. He thought they needed to decide whether there was room to blend the two together and achieve the goals that Senator Gebhardt and himself jointly had.

SENATOR GEBHARDT said that is what they were there to discuss. He said the counties had a problem with entering into contracts or doing the bidding process at any level. He thought the real issue with the counties was whether they have the authority to make the decision to do it in house or let it to contract. He thought the \$50,000 figure for contracting was probably a pretty high number. He thought the real issue with the contractors was that they would have the opportunity to bid, and he believed they would be fine with a solicitation process rather than the formal process. He gave the example in Musselshell County where they had anyone who wanted to do work for the county leave their name and the kind of work they did with the clerk and recorder. When the county had that kind of work going on they solicit their bids. He said there was another place in code where a contractor had to have \$300,000 liability insurance. If they had the liability insurance already they would submit their insurance certificate. However, they didn't have to have that to bid on work, only to start work. He was sure the bigger issue with the contractors was having the opportunity to bid on these jobs.

SENATOR LAIBLE said he did not want to hamstring local governments when it came to those maintenance items that they were probably much better at doing. He said that is why his bill identified those items that were exempt. He thought under current statutes cities and towns had their limits set at \$25,000.

Alec Hansen, League of Cities and Towns replied that was correct.

SENATOR LAIBLE said the premise of his bill was to give them a little more latitude. He said he did not know when the \$25,000 dollar limit was set but this would move them to a little higher level.

SENATOR GEBHARDT said he did have that information but did not remember how long ago it was set.

Alec Hansen thought those limits were set at least ten years ago. He said the key thing on the city side was if there was a contract that is the bid limit.

SENATOR GEBHARDT replied that was the way the county language read until four years ago. He had found out in the past couple weeks that there were a couple towns where contractors felt that was abused.

SENATOR LAIBLE said the title of SB 46 said "An act entitled an act removing the requirement that a county must enter into a contract for certain large purchases or construction contracts, amending section MCA, provide an immediate effective date." He asked Leanne Kurtz if they were to incorporate part of the language of his bill, if that would fall within the title.

Leanne Kurtz replied it depended on which language.

SENATOR LAIBLE said SB 46 removes the requirement.

Leanne Kurtz said the key to SB 46 is striking "must be entered into" and your bill leaves that in. She stated it was a pretty specific title.

SENATOR LAIBLE asked if they could change the title.

Leanne Kurtz said it would depend on exactly what you wanted to do, but she did not think that any changes that went against striking "must be entered into" would fit within the scope of the title of SB 46. She said if this committee decided they wanted to somehow combine both bills, they should approach the local government committee about requesting a committee bill, or use **SENATOR LAIBLE'S** bill as a vehicle.

SENATOR LAIBLE said as he saw the two concepts, SB 46 would remove the requirement and his said to enforce the requirement. So if the committee decided to go with that concept, he wondered if he could give his bill to **SENATOR GEBHARDT**.

Leanne Kurtz replied that his bill was still an LC number and he could do whatever he wanted with it.

SENATOR LAIBLE asked if his bill met the concerns that **SENATOR GEBHARDT** had with this, to give the counties some control over this, but also to set some limits or triggering mechanisms.

SENATOR GEBHARDT replied that his bill covered what the counties wanted. Senator Laible's bill presented what the contractors would like to have. He thought there might be some middle ground.

The counties did not have a problem agreeing with a number of the things in your bill, but the real issues with the counties is whether they have the authority to make the decision to do it in house or let it to contract. He suggested that there should be some language put into Senator Laible's bill that they shop around for bids. He said the counties don't want the formal process because it is ridiculous to spend \$5,000 to do a \$2,000 dollar job. He said that was not a wise use of taxpayer dollars.

SENATOR LAIBLE said he appreciated that.

SENATOR GEBHARDT said at the same time they could solicit those bids with a telephone call, it may not be real formal but at least everyone had an opportunity to participate.

SENATOR LAIBLE said he thought that was why they set a threshold of \$50,000. Anything below that number, the counties were free to do whatever they wanted. He said over that threshold they would be required to go to bid.

SENATOR GEBHARDT said that \$50,000 was not a lot of work when it came to hauling gravel or some things that have been everyday maintenance for most counties.

John Ostlund, Yellowstone County Commissioner said they needed to do what was responsible for the public in this and that is what they were all commissioned to come here and do. He said Yellowstone County had 29 employees and that was the minimum required to provide essential services. He said during long periods of winter when there was no snow it was irresponsible of commissioners to allow their road departments to not be productive. He said they wanted them to be highly productive doing routine road gravel projects and things like that where contractors cannot compete. He said commissioners need the authority to decide which projects are productive and which projects are in the public's best interest, because the tax money collected is for public safety. The restrictions that a contract must be entered into over \$50,000 places a burden on the commissioners to do small projects in rural areas that are inconceivable for the public. It is not in their best interest. There are very few counties that are problem counties. Most counties let out contracts for most of their work. He said the word "may" gives them the ability to provide for the public's best interest. He said that \$50,000 dollar limit would not work.

SENATOR LAIBLE said his bill excluded snow plowing and many maintenance activities, such as weed spraying, pot hole repair and road grading.

John Ostlund replied road grading would be routine maintenance, however minor realignments and elevating, would exceed \$50,000.

SENATOR LAIBLE asked how he could change the language so he would be happy with it. He did not want to tie the hands of the counties. He said his bill was trying to prevent road departments from going out and creating construction companies funded by taxpayer dollars to compete with other contractors who pay those taxes. He said if there was a way to put language in to cover those concerns he was flexible.

John Ostlund said you would spend a lot of time trying to define all those things, that could exceed \$50,000. He said there were 56 counties out there that need to be responsible. He did not think trying to fix problems in two counties with legislation was the best thing to do.

SENATOR WHEAT said he kept hearing reference to a couple counties that were trying to compete with the contractors. He wondered if there was a problem out there.

Cary Hegreberg, MT Contractors Association said they were on record in opposition to this particular bill. He said they would like the bill better with the amendments that had been talked about but that they would still oppose it. He said one example of the problem was that Butte SilverBow was doing about a 1.3 million dollar utility job replacing water mains. He said they were one of the largest construction enterprises in that part of the state and regularly perform public works construction in that area. He said other areas were Ravalli and Flathead Counties. Those governments have their own hot plants, gravel crushers, and construction equipment. Clearly that is construction and not maintenance. He said they were not arguing that they want to perform all the maintenance functions in local government, but were saying they think that companies that pay taxes on their equipment and taxes to local government ought to be given an opportunity to compete for contracts.

Gordon Morris, MT Association of Counties pointed out that this section of law was originally enacted in 1933. Since then it had been amended in 1981 to increase the sum to \$25,000. It was amended again in 1991 to increase the dollar amounts and in 1997 to increase the dollar amounts, and then in 1999 the wording "must be contracted", was injected into a bill that was illegal when it was done. He said they were trying to restore it back to the 1933 language that states "a contract for the purchase" He said that language had been there for seventy some years and he did not think it had done damage to the contractors of Montana.

He thought they should act on this bill, and let Senator Laible's bill have a hearing and let the chips fall where they may.

Alec Hansen said Cary had talked about Butte, Ravalli County, Flathead County, but he would suggest that the cities in Montana have a good working relationship with contractors. He said the city of Great Falls works with the contractors to decide the best way to do these jobs. Whether they should be done by the city crews or contracted. He thought that should be used as a model for cities across the state. He said the bill that Senator Laible has would in no way advance the possibility of them sitting down and working out some cooperative agreements with the contractors. He said Butte SilverBow did do a lot of work but they also created a lot of work for the contractors. He said he did not think a definition could be written and put into a bill that could cover all the possibilities out there. He said there are places in Montana where there is no competition. He said there had to be some trust that locally elected officials can make wise decisions on the best use of public funds.

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Don Judge, Teamster Local 190 said these folks represent county and city workers. They feel that the most productive use of those workers is to keep them busy, make them responsible to the taxpayers that they work for. He said if there was a situation where there is contracting out of some of the work done by these workers, then what do these workers do. He thought there was only one option, and that was to put these people to work doing productive work for the taxpayers of the state of Montana. If they are laid off they are entitled to unemployment compensation. He said you had heard from the counties that it is impossible for the private sector to bid the kind of work that these folks do at a competitive price that benefits the taxpayers. He agreed that SB 46 in it's current form was the appropriate bill to pass, and he urged the committee to do so.

Harold Blattie said he really wanted to focus on the fact that for seventy years 75-23-01 was an advertising law. If you bid, you were required to advertise. In 1999 in was changed to a bidding law by adding the language, "must be entered into". He said there was a big distinction there.

SENATOR LAIBLE asked if 75-23-01 didn't say a contract must be entered into, and if that is taking place how come local governments are doing contracts themselves rather than going out to bid.

Harold Blattie said that language was put in, in 1999 and quite frankly a year and half lapsed before they were aware of that language being in statute.

SENATOR LAIBLE said so this law had been disregarded for the past year and half.

Harold Blattie replied he did not know.

SENATOR LAIBLE said this bill made counties legal who were not obeying this law at the present time.

Harold Blattie said it restored the language to what they understood the law to be. He said they were totally unaware of the change that was made.

Alec Hansen said he had told the counties what had happened with the law. He said he had found out about it at a meeting with some city attorneys when they were discussing raising the bid threshold for the cities. He said that was more than a year after the change had been enacted. He said he did not think the counties were aware of it.

SENATOR LAIBLE said it was apparent that both bills should run their course, and they could see what happened. He did not think they were close to having some sort of compromise.

SENATOR WHEAT said what he was hearing, was this bill was a mixing zone between private enterprise and the government services that are provided to the public. He thought it came down to relying on your elected officials at the local levels to make the right decisions. He said at some time you have to place some trust in those people. He said sometimes legislatures need to leave it to the local official to get the job done.

SENATOR GEBHARDT said he agreed with that. Local elected officials can probably do things that are inappropriate throughout one term of office, but would probably not be reelected. He said they should probably just go forward with the bills as they were. He said he had asked Leanne to draft some amendments that would allow SB 47 to proceed without knowing the outcome of SB 46. He wondered if that seemed appropriate to everyone.

SENATOR WHEAT said it seemed appropriate to him. He asked if the cities and towns had any heartburn about the amendment to SB 46 that removed "and best" from responsible bidder.

Jim Reno replied he had a problem with it. He said if you had a contractor with a history of being the lowest bidder but the worst end product, he did not want to be forced to give them a job.

SENATOR WHEAT said so what you are saying is it gives the counties and towns the discretion to go through and decide what was best.

Jim Reno replied that was true, sometimes the lowest is not the best.

SENATOR GEBHARDT said it could read lowest responsible bidder.

SENATOR LAIBLE said he would say the same thing. He wondered though when you got a contractor if the bonding company did not stand behind the job.

Jim Reno said it was easier to stay out of court. He would rather have the discretion to say if a company had done a bad job, he did not have to use them again.

Vern Peterson, Fergus County pointed out this also applied to buying pickups and other projects. He said you don't always require bonds because they let out contracts all the time for less than \$50,000 and the bond would be too expensive. He said they liked to hire local contractors that they knew would get the job done.

SENATOR GEBHARDT said they would take a look at Senator Laible's bill when it was drafted. He made some suggestions that might make his bill better. He thanked the committee for showing up.

ADJOURNMENT

Adjournment: 8:05 A.M.

SEN. KELLY GEBHARDT, Chairman

PHOEBE OLSON, Secretary

JB/PO

EXHIBIT (los12bad)